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# IN THE SUPREME COURT
## OF THE UNITED STATES

OCTOBER TERM, 1965

No. 849

SAM E. BAKER and FRANK W. FORD d/b/a BAKER AND FORD, a partnership,
*Appellant,*

v.

STATE OF ALASKA, one of the United States,
*Appellee.*

On Appeal from the Supreme Court of the State of Washington.

## JURISDICTIONAL STATEMENT

BRUCE T. RINKER
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Bellingham, Washington.

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Washington 6, D. C.
*Attorneys for Appellants.*

PIONEER PRINTING CO. BELLINGHAM, WASHINGTON

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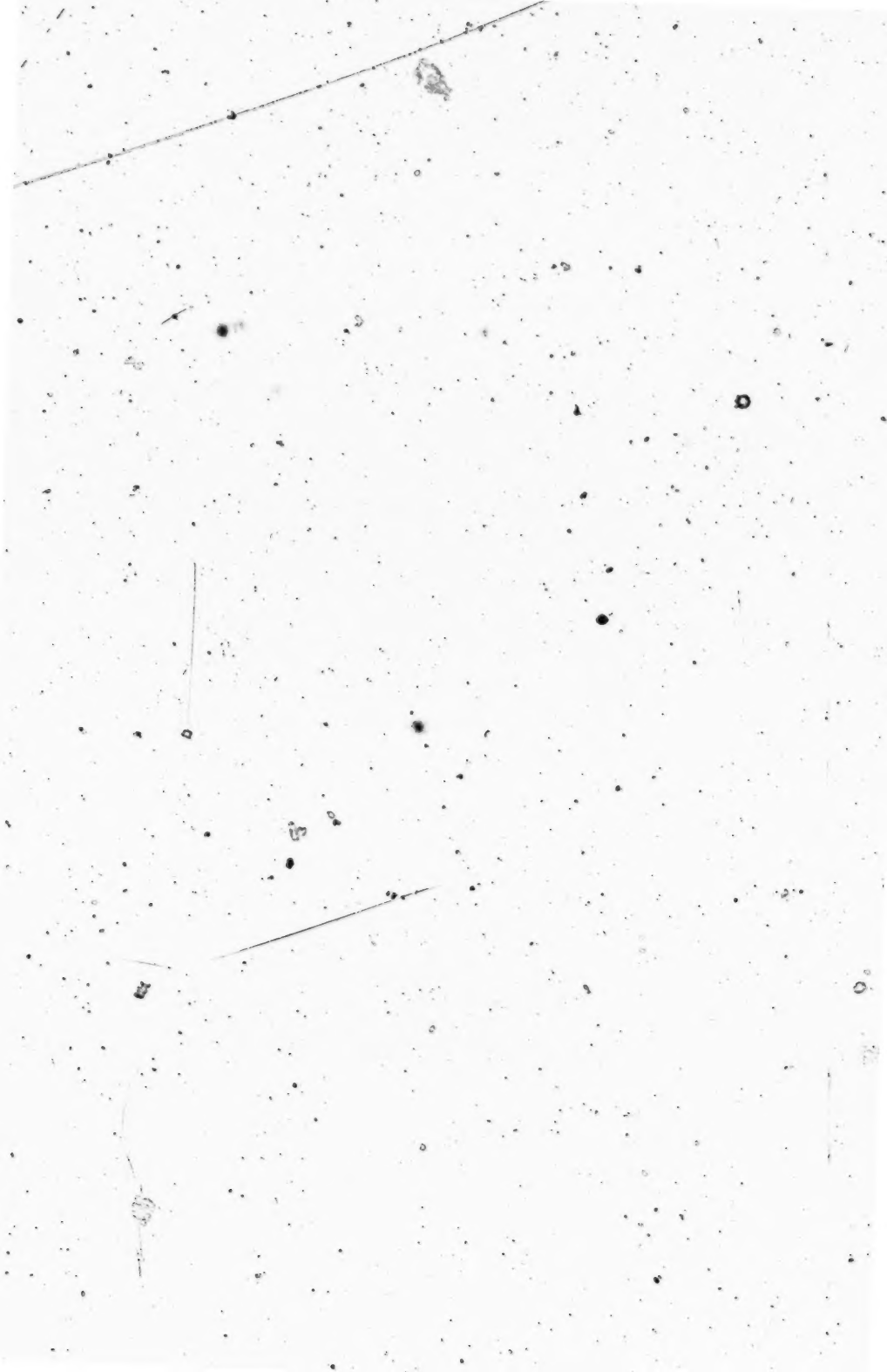

## JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of the State of Washington, reversing and modifying the judgment of the Superior Court of the State of Washington for Whatcom County, and entering judgment for Business License Taxes for the State of Alaska. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial federal question is presented.

### *Opinions Below*

The Memorandum Decision of the Superior Court of the State of Washington for Whatcom County is not reported but is set forth as Appendix A. The decision of the Supreme Court of the State of Washington is reported in the advance sheets of the Washington Reports at 64 Wash. Dec. 2d 221 and at 390 P. 2d 1009 but has not yet appeared in the regular Washington Reporter system. The decision is set forth as Appendix B.

### *Jurisdiction*

The action was brought by the State of Alaska in the Superior Court of the State of Washington, County of Whatcom to recover Business License Taxes allegedly owed by Appellant, a federal contractor. The tax was levied under the Alaska Business License Act, Alaska Statutes Annotated (A.S.A.) 43.70.010 et seq., as amended, and Chapter 71, Session Laws of 1955. This action was brought under the Uniform Collection of Taxes Act, (R.C.W. 4.24.140) and the Alaska Reciprocal Tax Collection Act (A.S.A. Ch. 48, Sec. 1). Appellant asserted that the Alaska Business License Act was invalid as in conflict with the Constitution of the United States, Art. I, Section 8(17); Federal Law, the Buck Act, 4 U.S.C. §§ 105-110; the Armed Services Procurement Act of 1947, 10 U.S.C. §2305(c); and Federal Regulations as to qualifications

for bidders on federal contracts accompanying the Armed Services Procurement Act of 1947, A.S.P.R. Secs. 1-900—1-905, C.C.H. Government Contracts Reporter, Paragraph §32.170—32.174. The Judgment of the Washington Supreme Court here appealed from was originally dated and entered April 9, 1964. It became final under the Rules of the Washington Supreme Court on October 16, 1964 when that Court denied Appellant's timely Petition for Rehearing. A Notice of Appeal was filed in that Court on November 13, 1964.

The jurisdiction to review this decision by appeal is conferred by 28 U.S.C. §1257(2) and is sustained by *Leslie Miller, Inc. v. Arkansas,* 352 U.S. 187 and *Howard v. Commissioners of Sinking Fund of Louisville,* 344 U.S. 624.

*Statutes and Constitutional Provisions Involved*

The Alaska Business License Act, A.S.A. 43.70.010 et seq., as amended; together with Chapter 71, Session Laws of 1955. These statutes are Appendix C of this statement. The Buck Act, 4 U.S.C. §§ 105-110, the Armed Services Procurement Act of 1947, 41 U.S.C. §152, now 10 U.S.C. §2305(c), regulations supplemental thereto, A.S.P.R. Secs. 1-900—1-905; and Article I, Section 8(17) of the United States Constitution.

*Questions Presented*

Does the Buck Act permit a state to subject a non-resident contractor performing work exclusively on a military base, over which sole and exclusive jurisdiction lies in the United States, to a business license in addition to a net income tax?

Does an interpretation of the state business license statute severing the regulatory provisions thereof, but requiring payment of the license, conflict with the Federal Constitution and Federal Statutes?

*Statement of the Case*

Sam E. Baker and Frank W. Ford, doing business as Baker and Ford, a partnership, are engaged in the general contracting business. Their domicile is in the State of Washington and their principal place of business is in Bellingham, Washington.

Pursuant to an invitation to bid submitted from the State of Washington, Baker and Ford, hereinafter called Appellant, entered into contracts with the United States Department of Defense, United States Army Corps of Engineers, to perform work exclusively on United States military reservations located in the State of Alaska. All work contracted for, and subsequently performed, was done exclusively on United States Government military bases over which the United States Government retained sole and exclusive jurisdiction. All contracts were entered into under Federal Law, 41 U.S.C. § 152 (now 10 U.S.C. 2305(c) and regulations supplemental thereto. A.S.P.R. §§ 1-900—1-905. It was agreed that Appellant was subject to and did comply with the Alaska Net Income Tax Act, A.S.A. 43.20.010 et seq. pursuant to the Federal legislation commonly known as The Buck Act, 4 U.S.C. §105-110. In addition, however, the State of Alaska sought to have Appellant comply with the Alaska Businss License Act, A.S.A. 43.70.010 et seq. Appellant refused to pay this business license on the ground that the United States has not given to the State the power to license, but only to tax, within the narrow limits of the Buck Act.

The Alaska Business License Act provides that for the privilege of engaging in business in the state a person shall: (1) first apply, and (2) obtain a license, and (3) pay a license fee. A license must be issued which is valid only for the calendar year in which issued. Unless the "applicant" has personal or real property in Alaska equal to three times the amount of the probable tax, the applicant for the license shall file an approved bond equal

to twice the probable amount. The Commissioner shall not issue a license until this is done. The Applicant shall name the Commissioner of Commerce as resident agent for service of process and shall file an affidavit with the Tax Commissioner. Failure to comply with any of the provisions will result in:

(a) Refusal to issue the business license, and

(b) Maximum penalties of 25 per cent of tax assessed plus interest, and

(c) Fine or imprisonment.

The above listed items are required by the statute "for the privilege of engaging in business" in Alaska. Failure or inability to qualify for that privilege results in the withholding of the license.

This action by the State of Alaska seeks to recover the business license tax allegedly owed by the Appellant contractor for the year 1959 in the sum of $15,671.12 plus penalties of $3,917.78, and interest accrued to February 19, 1962, in the sum of $1,861.05. 1/

On the stipulated facts the Trial Court held that under the Buck Act the nonresident contractor performing work on an Alaskan military base, over which sole and exclusive jurisdiction lies in the United States, was not liable for the payment of the license fees required by the Alaska Business License Act.

The Court held that the Buck Act did not authorize a state to decide who may or may not carry on business for the Federal Government upon land exclusively within federal jurisdiction. The Court stated that though the

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1/ The action was brought in the State of Washington under Washington Uniform Collection of Taxes Act (R.C.W. 4.24.140) and the Alaska Reciprocal Tax Collection Act. (A.S.A. Ch. 48, Sec. 1).

amount of the tax is measured by gross receipts, the tax is imposed upon the "privilege" of engaging in business in Alaska. It held the Alaska Business License Act invalid as to Appellant on two grounds. (1) Lack of power in the state to legislate concerning permits, licenses or fees for the same; and (2) conflict between the state legislation and existing federal laws as to control over government contractors.

The Supreme Court of Washington, interpreting Alaska Law, reversed and modified. It held that, notwithstanding the fact that Alaska has a Net Income Tax Act, this Business License Act was an income tax within the meaning of the Buck Act. Determining that the Business License Act was a revenue measure it held that Appellant was required to apply for a license to engage in business in Alaska for a primary fee of $25 plus a sum equal to 1 per cent of the gross receipts therefrom in excess of $20,000 from business during any one year. It also held that the remaining sections of the law were clearly and plainly regulatory and not within the exceptions of the Buck Act but were severable as to Appellant in this case. The Supreme Court of Washington severed the provisions of the Alaska Business License Act and held that Appellant contractor must comply with the revenue portions but not the regulatory portions. The Court also held that penalties and interest must be set aside and barred by virtue of the statutes of limitations of Alaska and Washington.

*The Federal Question Is Substantial*

This case involves an interpretation of the Federal Constitution and statutes and of the state law of Alaska by the courts of the State of Washington. Permitting states to require federal contractors to comply with a State Business License Act as a condition precedent to engaging in business activities exclusively on federal military reservations where sole jurisdiction is in the federal government under which it can allow or reject, is contrary to the

Federal Constitution and statutes. Severing the regulatory provisions of the Alaska statute but retaining its revenue provisions, as was done by the Supreme Court of Washington is not an adequate solution. Federal contractors under Federal legislation (Buck Act) are subject to local sales, use and income taxes. But taking a regulatory license act and applying its "revenue provisions" but severing its "regulatory provisions" to a federal contractor deprives Appellant of his constitutional right to contract with his government and of due process and equal protection of the law. It also impinges on the exclusive jurisdiction of the Federal government to select its own contractors.

In addition, a substantial sum of money is here involved. If the Washington Supreme Court decision stands, the contractor is required to pay the State of Alaska $15,671.00 for one year under this licensing act in addition to the regular income tax. And a number of years are involved (from 1953 to date). Such substantial costs to federal contractors would be passed along to the Federal Government.

This Court has never decided the issues here presented, although it has set forth criteria and doctrine which we think invalidate the Alaska Business License statute.

*Federal Contractors Traditionally Immune from State Control*

Based on Article I, Section 8, Clause 17 of the United States Constitution this Court has consistently held that a state has no right to license or tax a federal contractor engaged exclusively on military reservations where sole jurisdiction has been retained by the federal government. *James v. Dravo Contracting Co.*, 302 U.S. 134; *Surplus Trading Co. v. Cook*, 281 U.S. 647.

*The Buck Act Waiver*

The United States, however, by the passage of the Buck

Act, 4 U.S.C. §§105-110 waived the immunity of federal contractors to a limited extent with regard to "sales or use taxes" and "income taxes" as defined in the Act. The Act does not, however, give the state the right to license federal contractors or to collect license fees.

And, as succinctly stated by the Trial Court (Memorandum Decision, Appendix A):

> "If the state legislation conflicts in any respect with federal law, it must give way to the superior sovereignty. The Buck Act is a waiver by the federal government of certain of its powers over areas, and its instruments therein, exclusively within its jurisdiction, and is in effect a grant of such powers to the several states. As such it must be strictly construed and not have read into it any grant or waiver not intended by Congress."

Appellee concedes that the fee here involved is not a sales or use tax. It further concedes that it has no right to license Appellant or collect license fees from them except by means of the "revenue" concept which it applies to this regulatory license act. The Supreme Court of Washington upholds the regulatory license act, having severed what it calls the regulatory provisions from the revenue provisions. Such an interpretation cannot be allowed to stand.

Permitting states to license federal contractors as a condition precedent to engaging in business activities exclusively on federal military reservations, where the sole jurisdiction is lodged in the federal government as required here, involves: (1) making application to do business in said state; (2) paying the initial fee incident thereto; (3) filing a bond as security; (4) naming a resident agent for service for collection of monies due under

said act; (5) reporting their gross receipts from such activities; (6) paying business license tax on said gross receipts and (7) in the event of failure or inability to do so have all of their working assets in the state including equipment and materials on military reservations automatically liened and their license and accompanying right to do business on said military reservations cancelled. These effects obviously conflict with the constitutional power of the federal government to select its contractors without state supervision or prohibition. It would be in conflict both with the concept of immunity of instruments of the United States from such control in the performance of their duties (*Johnson v. Maryland*, 254 U.S. 51); and in conflict with the Armed Services Procurement Act of 1947 (10 U.S.C.A. 2305(c) and that Act's accompanying regulations which set out the qualifications to be met by bidders on federal contracts. (A.S.P.R. Secs. 1-900—1-905) (C.C.H. Govt. Contracts Reporter Paragraph §32. 170-32.172). *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187; *Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624. As stated by Mr. Justice Douglas in his dissent in *Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624, 629, "The Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States."

Summarizing, the ultimate substantial federal question involved is whether a state is limited by the grant of the Buck Act to the imposition of the specific taxes named therein, i.e., sales, use or income taxes on federal contractors engaged exclusively on military reservations over which the federal government otherwise has sole jurisdiction, or whether a state may under the limited grant of that Act require also an additional license for the privilege of so engaging in business and impose substantial license fees and conditions for the granting or retention of that license.

Respectfully submitted,

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## APPENDIX A

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

| | |
|---|---|
| STATE OF ALASKA, one of the United States, *Plaintiff.* vs. SAM E. BAKER and FRANK W. FORD d/b/a BAKER AND FORD, a partnership, *Defendants.* | No. 38535 MEMORANDUM DECISION |

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The stipulated facts set out in the Pre-trial Order herein present a single question:

> Is a nonresident contractor, who performs work on an Alaskan military base over which sole and exclusive jurisdiction lies in the United States, liable for payment of a permit fee under the provisions of the Alaska Business License Act within the purview of the Buck Act?
> The question must be answered in the negative.

Historically, a state could not lawfully impose a tax upon a person in defendant's position until comparatively recent times. However, by the passage of the Buck Act (USCA Sec. 105-110) in the 1940's the United States waived jurisdiction with a consequent removal of immunity in certain respects. Those taxes now permitted to the state are defined by the act as follows:

"(b) The term 'Sales or use tax' means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

"(c) The term 'income tax' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

The Alaska legislation involved here has as its title "Alaska Business License Act." The pertinent provisions follow:

"*Section* 2. *Definitions.*

(d) 'Gross receipts' shall mean all receipts . . . received from engaging . . . in business, without deduction on account of . . . the cost of material used, labor or service cost . . . "

"*Section* 4. *Application for License.*

(a) For the privilege of engaging in a business in the Territory of Alaska, a person shall first apply, upon forms prescribed by the Tax Commissioner, and obtain a license so to do, and pay a license fee . . . "

(b) (Provides for renewal of such license.)

(c) (License is valid only for the calendar year.)

"*Section* 5. *Levy and Computation of License Fee.*

(a) The license fee for each business shall be $25.00 plus a sum equal to one-

> half of one per centum of the gross receipts . . . "
>
> "*Section 9. Security.*
> Sub-section (b) requires a nonresident to declare his lienable property and if it is not worth three times the amount of the probable tax, the Tax Commissioner shall not issue the license until the applicant has filed a bond in twice the probable amount for the tax.

In addition to the above, Chapter 71 of the Laws of 1955, as a condition precedent to doing business in Alaska, requires all nonresidents to file a sworn statement with the Tax Commissioner, post a tax liability bond, and appoint the State Auditor as statutory agent for service of process.

Plaintiff contends that the tax in question is an 'income tax' within the Buck Act. Defendant contends that it is a business license fee or permit tax and that the United States has not yet given to a state the power to license but only to tax with the narrow limits of the Buck Act.

Defendant has paid the tax based upon its net income as required by the "Alaska Net Income Tax Act." The parties agree that the tax in question is not a sales or use tax. The question remains whether, being based on gross receipts of the business, it is an income tax and, therefore, permitted by the federal legislation. If this was an open question, then it might be appropriate to examine the Alaska statute to determine whether there was an ambiguity susceptible of being resolved by the application of familiar rules of statutory construction. But it would appear that the question has already been answered by the Supreme Court of the United States in a case wherein a similar tax was held to be an income tax as measured by the language of the Buck Act. *Howard v. Commissioners*, 344 U.S. 624, 97 L. ed. 617, 73 Sup. Ct.

465. In the Howard case the tax was described in the ordinance as "an annual license fee for the privilege of engaging in said activities, which license fee shall be measured by one per centum of" all wages or net profits of all businesses. In some respects the facts are similar to the facts of the instant case. However, the reported case does not indicate that a person must first apply for and obtain a license for the privilege of working, nor does it set out any conditions precedent to obtaining such permit or license. It simply holds that the tax authorized by the ordinance was an income tax within the meaning of the Buck Act. It is not authority for the premise that the Buck Act authorizes a state to decide who may or may not carry on business for the federal government upon land exclusively within federal jurisdiction.

Even though the tax in question is regarded as an income tax, it does not follow that it is collectible against the defendant in this case. If the state legislation in question conflicts in any respect with federal law, it must give way to the superior sovereignty. The Buck Act is a waiver by the federal government of certain of its powers over areas, and its instruments therein, exclusively within its jurisdiction, and is in effect a grant of such powers to the several states. As such it must be strictly construed and not have read into it any grant or waiver not intended by the Congress.

There is nothing in any federal legislation giving to the state the power to require a permit in a situation such as presented by the facts of this case. Further, the state law, in its requirements and conditions precedent to the granting of a permit, is in conflict with the Armed Services Procurement Act of 1947 (41 USC 152). That act enumerates the provisions governing the letting of bids while the regulations set out the qualifications to be met by bidders on such federal contracts. Any statute or ordinance purporting to give to a local official the power of veto over the federal government in the selection

of its contractors for work of the nature here involved must be struck down. The work was in the interests of national defense and such holding is justified as a matter of expediency and sound public policy. It is supported by the cases wherein the control over the contractor varied only in degree.

In *Miller v. Arkansas,* 352 U. S. 187, 1 L. Ed. (2nd) 231, 77 S. Ct. 257, the contractor selected by the government for work on an area not even then within federal jurisdiction was convicted by the state court for not having obtained a license covering such work required by Arkansas law. The state law like the federal regulations set out the various factors to be used by the licensing board in passing on an application. The United States Supreme Court reversed, saying:

> "Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder."

The court also quoted from *Johnson v. Maryland,* 254 US 51, 65 L. Ed. 126, 41 S. Ct. 16:

> "It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on . . . "

In *City of Birmingham v. Thompson,* 1952 (CA 5th

Ala.) the contractor paid a building permit fee to the city in connection with the construction of a Veterans' hospital on land deeded by the state to the federal government. In the deed to the United States, the state reserved certain rights to tax. In the contractor's suit for recovery of the permit fee paid, the district court gave him judgment for the money. In affirming, the Circuit Court held that since the state reserved no right to regulate construction of buildings on the land, the city had no such right. It will be noted that the city argued that there was no basis for contending that the city was debarred from requiring the contractor to pay for the privilege of conducting its work. The court pointed out that the ordinance did not merely require the payment of a fee—it required the contractor to first apply for and obtain the permit together with other things. It left to the discretion of the city's building official the decision whether or not the permit would in fact be issued. As in the instant case, there were conditions to be met before a license would be granted. To the same effect is *Oklahoma City v. Sanders*, 94 F(2d) 328. See also *Surplus Trading Co. v. Cook*, 281 U. S. 647, 50 S. Ct. 455, and *James v. Dravo Contracting Co.*, 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155.

In some of the cases on this point the area where the work was done had been purchased from the state and in that respect differ from the facts of the instant case. Article 1, Sec. 8, Clause 17 of our Federal Constitution grants to Congress the power to exercise "exclusive legislation" over all places purchased from states with their consent "for the erection of forts . . . and other needful buildings." There are but few decisions on this point but under the existing law, state or local regulations which conflict with the above provision will be held inapplicable to contractors engaged on federal projects. If exclusive jurisdiction lies in the United States on lands purchased from states, where the state reserves no jurisdiction, then *a fortiori*, the federal government has exclusive jur-

isdiction over an area which has always been United States territory, as in the case at bar.

The Alaska Business License Act is invalid as to the defendant in this case on two grounds, (1) Lack of jurisdiction in the state to legislate concerning permits, licenses or fees for the same, and (2) conflict between the state legislation and existing federal laws as to control over government contractors.

Plaintiff contends that the act is primarily one for raising revenue. It may well have been the legislative intent to make this a revenue statute with merely incidental powers of regulation. But the fact remains that the State of Alaska is here attempting to collect revenue for a permit or license they have no right to demand. It is also probable that the legislature intended to screen contractors and allow to work only those whom the state considered good tax risks. In any event, under the cases cited above, collection of the revenue in cases of this nature is denied.

Plaintiff further contends that even though the licensing portions of the act be held invalid, the taxing portions should be enforced, pointing to Section 13 of the Act. This provision reads as follows:

> "Section 13. SEPARABILITY. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and such application to *other* persons or circumstances shall not be affected thereby." (Emphasis supplied)

This statutory provision does not permit the enforcement of a valid portion against the *same* person against whom it is invalid as to another portion. Though measured by gross receipts, the tax is imposed upon the "privilege" of engaging in business in Alaska. As we have seen, the

state cannot deny defendant the right to work on the military project. Without the permit and licensing provisions there is nothing to tax, and to attempt by interpretation to remedy the situation would be judicial legislation of the rankest sort.

Judgment must be for defendant.

Findings, Conclusions and Judgment in accordance with the above may be submitted.

Dated this 19th day of March, 1963.

BOONE HARDIN
*Judge*

## APPENDIX B

## IN THE SUPREME COURT
## OF THE STATE OF WASHINGTON

STATE OF ALASKA, one of the United States,
*Appellant.*
v.
SAM E. BAKER and FRANK W. FORD, doing business as BAKER and FORD, a partnership,
*Respondents.*

No. 37181

Department Two

Filed April 9, 1964

---

LANGENBACH, J.‡—This action was brought by the appellant, State of Alaska, under the authority of RCW 4.24.140, and chapter 71, Session Laws of Alaska, 1955, to recover business license taxes allegedly owed by the respondents for the year 1959.

It was submitted to the trial court upon an agreed statement of facts. The pleadings were supplanted by a pretrial order which set forth the various facts and questions of law of the respective parties.

During all times material, the respondents were engaged in the general contracting business. They were partners domiciled and with their principal place of business in Bellingham, Washington, which gave the superior court jurisdiction to try the issues. During the year 1959, they were not licensed to do business in the state of Alaska under the Alaska Business License Act, hereinafter referred to as ABLA. They had been awarded sev-

‡ *Judge Langenbach is serving as a judge pro tempore of the Supreme Court pursuant to Art. 4, § (2a) (amendment 38), state constitution.*

oral contracts by the United States Government to perform work on United States military reservations in Alaska. All of the work thus contracted for and subsequently performed was done exclusively and entirely upon United States military reservations. The tax for 1959 was imposed by Title 43, Alaska Statutes, § 43.70.010, *et seq.* It pertained entirely to the activities of the respondents in Alaska during that year.

Appellant alleged that respondents were indebted for business license taxes for the year 1959 in the sum of $15,671.12 plus penalties of $3,917.78, and interest accrued to February 19, 1962, in the sum of $1,861.05.

The respondents denied the allegations of the complaint and later pleaded affirmatively the 2-year statute of limitations against the collection of statutory penalties and interest.

After the trial and hearing, the trial court found the facts generally as above detailed. It also found that, by reason of the facts that respondents' activities in Alaska were performed entirely on United States military reservations and the United States Government had granted the appellant state no rights or jurisdiction over such United States military reservations, except as provided by virtue of 4 U.S.C.A. §§ 105-110 (The Buck Act), the respondents were not obligated to comply with the provisions of ABLA. They were independent prime contractors engaged in performing those contracts solely on United States military reservations; the amounts to be paid under ABLA were not income taxes or sales or use taxes within the meaning of the Buck Act.

The record showed that the complaint was verified March 26, 1962. The answer was verified March 30, 1962. The amended answer alleging that the 2-year statute of limitations under Alaska Compiled Laws Annotated, § 55-2-7 barred the section was verified December 3, 1962. In its findings and judgment, the trial court determined that

the penalties and interest could not be collected and dismissed the entire action. This appeal followed.

The contested issues in the appeal are:

1. The right of the state of Alaska to force respondents to comply with ABLA where the only work being performed is under contract with the United States Government exclusively on United States military reservations as a result of competitive bidding.

2. The right of the state of Alaska to bring this action and recover from respondents (a) ABLA tax for the year 1959, and (b) statutory penalties and interest therefor.

The main argument of the appellant is that ABLA, § 43.70.010 *et. seq.*, is a revenue measure in spite of the language in the act pertaining to licensing.

Both parties agreed that, prior to the passage of the Buck Act (1940) 4 U.S.C.A. §§ 105-110, the various states of the Union had no legal basis for imposing a tax on the activities of a business or individual, when such activities were carried on exclusively within the confines of a federal reservation. They are also in agreement that the effect of the Buck Act was to grant to the states certain taxing powers. This is specifically provided in 4 U.S.C.A. § 106:

"(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

The Buck Act in § 110 defined permitted taxes as follows:

"(b) The term 'sales or use tax' means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

"(c) The term 'income tax' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

It is admitted by both parties that the state of Alaska does not have a sales or use tax. It is also admitted that the state has a net income tax and the respondents have paid their taxes thereunder.

The primary question becomes a determination as to whether the ABLA comes within the scope and purview of the Buck Act. Stated in another way, is the ABLA a revenue or a regulatory measure? The appellant contends that it is a revenue measure, constituting an income tax within the purview of the Buck Act. The respondents equally assert that it is a regulatory enactment within the police power.

The trial court, in support of its determination of the question as stated by it, set forth its conclusions as follows:

"The Alaska Business License Act is invalid as to the defendant in this case on two grounds, (1) Lack of jurisdiction in the state to legislate concerning permits, licenses or fees for the same, and (2) conflict between the state legislation and existing federal laws as to control over government contractors."

In support of its position, appellant cited 4 Cooley, Taxation (4th ed.) § 1784, p. 3509:

"It is often necessary to determine whether an imposition of a charge or fee by the government, generally in the shape of a license fee, is an exercise of the taxing power,

i.e., a tax in the strict legal sense of the term, or is an exercise of the police power . . .

". . .

"The distinction between a demand of money under the police power and one made under the power to tax is not so much one of form as of substance. The proceedings may be the same in the two cases, though the purpose is essentially different. The one is made for regulation and the other for revenue. If the purpose is regulation the imposition ordinarily is an exercise of the taxing power and is a tax. If, therefore, the purpose is evident in any particular instance, there can be no difficulty in classifying the case and referring it to the proper power. However, regulation may be kept in view when revenue is the main and primary purpose. The right of any sovereignty to look beyond the immediate purpose to the general effect neither is nor can be disputed. The government has general authority to raise a revenue and to choose the methods of doing so; it has also general authority over the regulation of relative rights, privileges, and duties, and there is no rule of reason or policy in government which can require the legislature, when making laws with the one object in view, to exclude carefully from its attention the other. Nevertheless, cases of this nature are to be regarded as cases of taxation. Revenue is the primary purpose, and the regulation results from the methods of apportionment that are resorted to in obtaining the revenue. Only those cases where regulation is the primary purpose can be specially referred to the police power. If revenue is the primary purpose and regulation is merely incidental the imposition is a tax; while if regulation is the primary purpose the mere fact that incidentally a revenue is also obtained does not make the imposition a tax, . . ."

*Terry v. City of Portland,* 204 Ore. 478, 495, 269 P. (2nd) 544 is also cited by appellant. The state of Oregon had licensed "coin-in-the-slot" machines at $50 per year. The

city of Portland passed an ordinance banning such machines. The plaintiff challenged the ordinance on the ground that the state had preempted such regulations. It was held that the state law was a license for revenue only without regulation. The city ordinance was a regulatory act prohibiting the possession and use under the police power. The court said:

"It is common to find in measures enacted under the police power many regulations which, if violated, subject the offender to punishment, but, generally, taxing legislation permits of only one violation, that is, nonpayment of the tax. . . ."

The opinion also cited the above quotation from Cooley on Taxation, and quoted further:

"Generally, a fee or charge is an exercise of the police power rather than a tax where certain tests, conditions or qualifications are imposed in addition to the payment of money. But the mere fact that . . . a license statute makes a violation of its provisions a misdemeanor does not preclude the license fee being an exercise of the taxing power rather than the police power . . ."

The distinction between a license fee and a license tax is succinctly set forth in 53 C.J.S., Licenses § 3, p. 452:

"If the fee is exacted for the primary purpose of regulating or restraining an occupation or privilege deemed dangerous to the public or to be specifically in need of public control, and compliance with certain conditions is required in addition to the payment of the prescribed sum, such fee is a license fee or license tax proper imposed in the exercise of the police power and is not strictly speaking an ordinary tax, even though it is called a tax in the legislation which imposes it. A charge imposed as a consideration for a privilege granted one by a governmental unit is not a 'tax' in the sense in which that word is ordinarily used.

"Where the fee is exacted solely or primarily for revenue purposes and payment of the fee gives the right to carry on the business or occupation without the performance of any further conditions, it is not a license fee but a tax imposed under the power of taxation, regardless of the name by which it may be called, or the mode adopted to enforce payment. The power of the licensing authority to revoke the license is not necessarily evidence that the fee required for the license is a regulatory rather than a revenue measure."

Appellant further contends that the tax imposed by ABLA is an income tax on gross receipts within the purview of 4 U.S.C.A. §§ 105-110, *supra*. The case of *Howard v. Commissioners*, 344 U.S. 624, 97 L. Ed. 617, 73 S. Ct. 465, is cited. This case involved the occupational license fee ordinance in the city of Louisville, Kentucky. The court therein sustained the imposition of the tax against the employees of a federal installation. That ordinance required an annual license fee for the privilege of engaging in business activities, which license fee shall be measured by 1 per cent of (a) all salaries, wages or other compensation earned by every person in the city, and (b) net profits of all businesses conducted in the city. In the course of that opinion, the U. S. Supreme Court said, p. 638:

"But the appellants next argue that the Court of Appeals erred in holding that the City's occupational tax or license fee was an 'income tax' within the meaning of the Buck Act, though holding that this tax or fee was not an income tax under the Constitution of Kentucky.

"Was this tax an 'income tax' within the meaning of the Buck Act? In a prior case, Kentucky had held this tax was not an 'income tax' within the meaning of the Constitution of Kentucky but was a tax upon the privilege of working within the City of Louisville. *Louisville v. Sebree*, 308 Ky. 420, 429-431, 214 S. W. 2nd 248, 253-254.

But the right to tax earnings within the area was not given Kentucky in accordance with Kentucky law as to what is an income tax. The grant was given within the definition of the Buck Act, and this was for *any tax* measured by net income, gross income, or gross receipts. In the instant case, the Kentucky Court of Appeals correctly stated that the question was whether the tax was an income tax within the meaning of the federal law. We hold that the tax authorized by this ordinance was an income tax within the meaning of the Buck Act . . ."

We agree that the revenue provisions of ABLA are not significantly different from those sustained in the *Howard* case, *supra*.

It is the position of the respondents that this is a regulatory act. As such, it is not within the limits prescribed by the Buck Act. In support of this position, they cite *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 1 L. Ed. (2nd) 231, 77 S. Ct. 257. There the plaintiff had been arrested for filing a bid, executing a contract and commencing work in Arkansas without having first obtained a license under Arkansas law for such activity. He was convicted and appealed.

The requirements of a contractor in Arkansas were set forth in the opinion of the U. S. Supreme Court, in reversing the conviction, as follows:

"'The Board, in determining the qualifications of any applicant for original license . . . shall, among other things, consider the following: (a) experience, (b) ability, (c) character, (d) the manner of performance of previous contracts, (e) financial condition, (f) equipment, (g) any other fact tending to show ability and willingness to conserve the public health and safety, and (h) default in complying with the provisions of this act . . . or any other law of the State . . .'"

The court adopted the rationale of *Johnson v. Maryland*, 254 U. S. 51, 65 L. Ed. 126, 41 S. Ct. 16, as follows:

"'. . . the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on . . . '"

The court further said:

"Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder . . ."

To same effect: *City of Birmingham v. Thompson*, 200 F. (2nd) 505.

Patently the provisions and restrictions in the *Miller* case, *supra*, are more onerous, burdensome and discretionary than are the requirements of ABLA.

Appellant concedes that the regulatory provisions of ABLA (§ 43.70.020, § 43.70.070 and also § 43.10.160) may be invalidated under the separability clause in ABLA, which provides:

"If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby." Laws of the Territory of Alaska (1949), chapter 43, § 13.

Some of the sections of the Alaska Statutes against which the main assault has been concentrated and directed are as follows:

43.10.160: Every nonresident, as a condition precedent to doing business in the state shall file a sworn statement in affidavit form, with estimated gross receipts, estimated tax and license fees: if owner of real estate and fair

market value thereof; if not worth twice the estimated tax and license fees, then a surety bond must be furnished equal to twice the estimated tax and license.

43.10.170: The Commissioner of Commerce must be appointed as agent for service of process.

43.10.200: Provides for penalties for noncompliance up to $1,000 fine or one year imprisonment.

43.70.020: Provides for the application for license, stating that any person engaging in a business subject to licensing provisions of a regulatory nature must comply with such regulatory provisions before being entitled to a license under this act.

43.70.030: Provides for a license fee of $25 plus a sum equal to 1 per cent of gross receipts in excess of $20,000 from business during the year.

43.70.060: Provides that if a person fails to file a business license return or pay the fee, unless it is shown that failure is due to reasonable cause and not to willful neglect, 5 per cent is added for each 30 days, not to exceed 25 per cent in aggregate; that if a person fails to apply for a license or makes erroneous or fraudulent return, the department may assess fee from any information it can obtain.

43.70.070: Provides that amount of fee, interest and penalty constitute a lien in favor of state upon all the person's property located in the state, subject to foreclosure; that a nonresident person who starts to perform contract or other business in the state must state under oath the extent of lienable real and personal property against which tax may be collected, and if the value is not equal to three times the amount of tax for which the applicant will probably be liable, the tax commissioner shall not issue a license until the applicant has filed a surety bond equal to twice the probable amount of the tax for which the applicant may become liable.

43.70.100: Sets forth the penalty provisions.

43.70.110: Defines gross receipts as meaning all receipts from sources in the state received from engaging in business, without deduction of the cost of material used, labor or service cost.

Appellant contends that ABLA is an enactment for the collection of revenue only and is not a regulatory law. Basically, it must be construed as a revenue measure. The regulatory provisions are primarily for the collection of the tax.

Appellant also conceded the right of separability as set forth, *supra*. A critical examination of ABLA demonstrates that severability is possible without doing violence to the revenue parts of the act. Consequently, certain of the above sections must be construed as being purely regulatory requirements and not revenue producing measures.

The following sections are clearly and plainly regulatory enactments, and being severable, should be severed: §§ 43.10.160; 43.10.170; 43.10.200; 43.70.020(d); 43.70.070 (a)(b); and 43.70.100.

In other words, having determined that ABLA is a revenue measure, the respondents may be required to apply for a license to engage in business in Alaska for a primary fee of $25 plus a sum equal to 1 per cent of the gross receipts therefrom in excess of $20,000 from business during any one year. Beyond that, the provisions of ABLA are strictly regulatory measures and are not within the exceptions of the Buck Act.

This action is brought under the provisions of RCW 4.24.140. This section and other pertinent sections and statutes affecting this litigation are as follows:

RCW 4.24.140:

"The courts of the state shall recognize and enforce

the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect to the liability for taxes lawfully imposed by the laws of this state and officials of such state are hereby authorized to bring action in all the courts of this state for the collection of such taxes: . . . . *Provided, further,* That the time limitations upon the bringing of such actions which may be imposed by the laws of such other state shall not be tolled by the absence from such state of the person from whom the taxes are sought . . . "

RCW 4.24.141:

"The term 'taxes' as used in RCW 4.24.140 shall include:

"(1) Any and all tax assessments lawfully made whether they be based upon a return or other disclosure of the taxpayer, upon information and belief of the taxing authority, or otherwise;

"(2) Any and all penalties lawfully imposed pursuant to a tax statute;

"(3) Interest charges lawfully added to the tax liability which constitutes the subject of the action."

RCW 4.16.100:

"Within two years:

" . . .

"(2) An action upon a statute for a forfeiture or penalty to the state."

These statutes are set forth inasmuch as respondents assert that appellant is not authorized to bring this action; but primarily because respondents further contend that the action is barred by the appropriate statutes of limitation. It is alleged in the amended answer that the statute of limitation in Alaska (Alaska Compiled Laws Annotated, § 55-2-7) has a 2-year limitation with respect to statutory penalties. This is the same limitation in our own statute, *supra.*

To recapitulate: The complaint was verified March 26, 1962; the answer was verified March 3, 1962. The amended answer was verified December 3, 1962, and it alleged that the Alaska statute of limitations was 2 years; that the action was thus barred.

Under RCW 4.24.140, the time limitation was not tolled. In addition, RCW 4.16.100 *supra.* established a 2-year limitation against such actions brought in the courts of this state. The definitions in RCW 4.24.141 include penalties and interest, such as are imposed by the various sections in ABLA.

Without the necessity of further authority than these express statutes, the conclusion is irresistable that any efforts to collect any penalties or interest in this section must be barred by such statutes under the agreed statement of facts.

The ABLA is primarily an act for the imposition and collection of a tax for revenue purposes only. It must be reasonably construed as permitting the collection of an income tax based upon the gross receipts of the respondents engaged in doing business in Alaska, within the meaning and intent of the Buck Act. The appellant is thus empowered to issue a license to respondents to engage in their contractural business for an initial fee of $25 plus an additional 1 per cent of the gross receipts in excess of $20,000 from business during the year. *Howard v. Commissioners, supra.*

Those provisions in ABLA, *supra.* which are in the exercise of the police power and impose conditions and qualifications upon the respondents in their contractural relations with the United States Government are hereby declared to be regulatory in nature. As such, they are invalid and prohibited by the limitations and purview of the Buck Act. Such regulations and restrictions upon the activities of the respondents are within the prohibition announced in *Leslie Miller, Inc. v. Arkansas, supra.* Con-

sequently, they must be stricken as an unlawful invasion and interference with the contractural rights of the respondents in the gainful pursuit of their business in Alaska.

Concerning the penalty and interest sought to be collected from respondents, these must be set aside and cancelled as barred by the respective statutes of limitations of the states of Alaska and Washington.

The judgment of the trial court is modified by reversing that portion which held the revenue sections of the ABLA invalid and the court is instructed to enter judgment in the amount of $15,671.12 for business license taxes. As so modified, the judgment is affirmed. Inasmuch as both parties have partially prevailed, neither will be awarded costs.

LANGENBACH, J.

..... *Pro. Tem.*

*We Concur*:
Ott, C. J.
Donworth, J.
Finley, J.
Hamilton, J.

# APPENDIX C

## ALASKA BUSINESS LICENSE TAX

Sec. 43.70.010. *Exemptions.*—(a) The following gross receipts are exempt from taxation under this chapter:

(1) gross receipts from educational, religious, benevolent, fraternal, or charitable activities, where the entire amount of the receipts is held or expended for these activities, except receipts which are the result of a continuous engaging in a business or occupation otherwise subject to this chapter; [Comp. ¶ 65-241.]

(2) gross receipts from the operation of a hospital; [Comp. ¶ 65-247.]

(3) gross receipts from a municipally owned and operated utility and from operation of a utility by an incorporated utility district, nonprofit association, or nonprofit cooperative; [Comp. ¶ 65-249.]

(4) gross receipts from home handicrafts up to $500; [Comp. ¶ 65-251.]

(5) gross receipts of a resident wholesale firm registered in the state as a domestic corporation, or otherwise identifiable as a resident wholesaler, from sale of a finished product to dealers for resale to consumers, where the resale is subject to tax under this chapter; [Comp. ¶ 65-253.]

(6) gross receipts derived from a sale made to a person in a foreign country for shipment out of the United States, except when the goods or products sold are exported in bond for re-entry into the United States, [Comp. ¶ 65-261.]

(7) gross receipts of a manufacturer or processor derived from the sale of his product manufactured or processed in the state, except where the products are sold directly to the consumer; [Comp. ¶ 65-263.]

(8) gross receipts subject to the gross production tax

imposed by ch. 55 of this title, except that a person subject to the gross production tax shall obtain a business license and pay the initial $25 license fee; [Comp. ¶ 65-265.]

(9) gross receipts from taxes imposed by the state upon the sale of motor fuel; [Comp. ¶ 65-267.]

(10) gross receipts from a consumers' sales tax collected by a taxpayer for the state or a political subdivision of this state. [Comp. ¶ 65-269.]

(b) The word "consumer" as used in this section means the person who, in the ordinary common meaning of the term, ultimately uses goods, and diminishes or destroys their utility. [Comp. ¶ 65-253, 65-263.]

(c) The exemption from taxation of certain gross receipts as provided in this chapter does not exempt a person from the $25 initial license fee. [Comp. ¶ 65-270.]

Sec. 43.70.020. *Application for license.*—(a) For the privilege of engaging in a business in the state, a person shall first apply, upon forms prescribed by the commissioner, and obtain a license so to do, and pay the license fee provided for in § 30 of this chapter. A license issued to a firm for a particular line of business covers all its operations in the state in the line of business regardless of the number of its establishments. [Comp. ¶ 65-103, 65-303, 65-305, 65-603, 65-609.]

(b) Application for a renewal of a license and payment of the initial fee shall be made before February 1 of each year. [Comp. ¶ 65-613.]

(c) No license may be issued for a period extending beyond the end of the calendar year for which it is issued. [Comp. ¶ 65-501, 65-615.]

(d) A person engaging in a business subject to licensing provisions of a *regulatory nature* (for example, the requirement of posting a bond before beginning business as a collection agency) must, in addition to filing the regular

application required by this section, comply with those regulatory provisions before being entitled to a license under this chapter. [Comp. ¶ 65-619.]

Sec. 43.70.030. *Levy and computation of license fee.*— (a) The license fee for each business is $25 plus a sum equal to one-half of one per cent of the gross receipts in excess of $20,000 from the business during the year for which the license is issued, except that all gross volume in excess of $100,000 a year is taxed at the rate of one-quarter of one per cent. The annual license fee paid by a professional person to his professional board shall be credited against the initial fee required under this chapter. [Comp. ¶ 65-303, 65-403, 65-411.]

(b) The license fee for each national bank and state bank, trust company and savings and loan association is two per cent of its net income. Net income means the taxable income of each such taxpayer before net operating loss deduction and special deductions, computed as required under the Internal Revenue Code of the United States and includes all other income including income from federal, state or municipal obligations. Each of these taxpayers shall submit a copy of the income tax return which it files with the United States Collector of Internal Revenue and shall notify the commissioner of revenue in writing of any alteration or modification of the federal income tax return and of a recomputation of tax or determination of deficiency. The taxpayer who files his federal return on a fiscal year basis shall in addition submit a statement setting out all information which would be required and reported in a federal income tax return prepared for the calendar year. This statement shall be in the same form as a federal income tax return and the net income shall be computed as required under the Internal Revenue Code. The statement shall be submitted to the commissioner of revenue before the sixteenth day of April after the close of the calendar year. [Comp. ¶ 65-305, 65-405, 66-015.]

(c) The license for the privilege of taking orders through use of catalogs and by mail order offices in the state is the same as set out in this chapter for business generally and gross volume of business of those offices includes all orders taken at them whether delivery of the merchandise is made through the offices or not. [Comp. ¶ 65-307.]

(d) The initial fee of $25 applies to all of the provisions of this section, and shall accompany the application. The balance is due and payable on December 31st of each year and shall be paid before the first day of March following, except that the department may extend the time until the 30th of the following April upon application showing that the extension is necessary to enable the applicant to ascertain the amount of license money due. To enable accurate determination of the balance of the tax due at the end of each year, each person to whom this chapter applies shall keep records, give statements under oath, and make returns which the department requires. Returns are made under penalty of perjury. [Comp. ¶ 66-003, 68-401, 68-601.]

Sec. 43.70.040. *Review and determination of license tax.* —(a) As soon as practicable after the final payment of the tax, the department shall examine the return and determine the correct amount of the tax and, if an error is found, shall notify the taxpayer of the error and examine the taxpayer's records as authorized in AS 43.05.040, and take other proper steps to determine the amount due. [Comp. ¶ 67-103.]

(b) If an agreement cannot be reached with the taxpayer as to the amount of a license tax, the department may set a time and place of hearing on the question, upon at least 60 days' notice of the hearing by mail to the taxpayer. At the hearing a person may be required to appear and testify and produce records and other papers as provided in AS 43.05.040. [Comp. ¶ 67-105.]

(c) A person aggrieved by an action of the department

may apply in writing to the department within 60 days from the date of the notice of the action, giving notice of the grievance and requesting a hearing. [Comp. ¶ 67-105.]

(d) If the department determines that a fee in excess of the amount due was paid, he shall allow a refund or permit a credit at the option of the taxpayer. If refund is allowed, it shall be made out of the general fund by a voucher approved by the department. [Comp. ¶ 68-203.]

Sec. 43.70.050. *Appeals.*—If the person is aggrieved by the decision of the department, he may appeal to the superior court in the judicial district where he conducts his business. [Comp. ¶ 67-203.]

Sec. 43.70.050. *Penalties.*—(a) If a person fails to file a business license return or pay the fee, as finally determined by the department, unless it is shown that the failure is due to reasonable cause and not to wilful neglect, five per cent is added to the fee for each additional 30 days, or fraction of 30 days, during which that failure continues, but not exceeding 25 per cent in the aggregate. The amount added to the fee shall be collected at the same time and in the same manner and as a part of the fee. If the fee is paid before the discovery of the neglect, the amount added shall be collected in the same manner as the fee. In case of delinquency the legal rate of interest shall be assessed. If payment is made by a check, bill of exchange, or note which is later returned by the drawee as uncollectible because of insufficient funds or is dishonored by the drawee for any reason, the dishonor is prima facie evidence of nonpayment of the license fee. [Comp. ¶ 68-703.]

(b) If a person *fails to apply* for a license at the required time or makes, wilfully or otherwise, an erroneous or fraudulent return, the department shall assess the fee from any information it can obtain. This assessment is prima facie good and sufficient for all legal purposes under this chapter. [Comp. ¶ 67-110.]

Sec. 43.70.070. *Security.*—(a) The amount of the fee, interest charge, and penalty imposed under this chapter *constitutes a lien* in favor of the state upon all the person's property located in the state. *The lien arises upon delinquency* and continues until the liability for the amount is satisfied or the property is sold at foreclosure sale. The lien is not valid as against a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the office of the recorder in the manner provided for federal tax liens in AS 43.10.090—43.10.150. AS 43.10.090—43.10.150 apply to the tax liens arising under this chapter. [Comp. ¶ 68-051.]

(b) A *nonresident* person who starts to perform a construction contract or subcontract or other line of business in the state and is not known by the department to be the holder of adequate property in the state to secure collection of the license money which will probably accrue under this chapter by virtue of the business shall, in or with his application, state under oath the extent of lienable real and personal property against which the tax may be collected, and other information with respect to description, location and value of the property which the department prescribes. If the value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable to the state, *the department shall not issue the license until the applicant files with him a surety bond approved by the attorney general in a penal sum equal to twice the probable amount* of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, and with interest if not paid before delinquency. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department. [Comp. ¶ 65-621.]

Sec. 43.70.080. *Disposal of money.*—All money collected by the department under this chapter shall be deposited in the general fund. The Department of Revenue shall

refund to an organized borough, city of any class, incorporated or independent school district, or public utility districts, 60 per cent of the money collected in the local government.

Sec. 43.70.090. *Rules and regulations.*—The department may adopt regulations necessary to determine and collect the fees imposed and to enforce this chapter.

Sec. 43.70.100. *Penal provisions.*—(a) It is unlawful for a person to (1) wilfully evade a tax under this chapter; (2) fail to make a return or keep or produce a record required under § 30 of this chapter; (3) make a false or fraudulent return or false statement with intent to defraud the state or evade payment of the tax; or (4) aid or abet another in an attempt to evade payment of the tax. [Comp. ¶ 68-705.]

(b) It is unlawful for an executive officer or agent of a corporation or agent of a person to make or permit to be made for his principal a false return or false statement in answer to an inquiry from the department with the intent to evade the payment of the tax under this chapter. [Comp. ¶ 68-705.]

(c) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. [Comp. ¶ 68-705.]

(d) In a prosecution under this chapter, no person otherwise competent as a witness is privileged from testifying on the ground that his testimony may incriminate him. However, no indictment or prosecution shall afterwards be brought against the witness on account of an offense or transaction concerning which he testifies as a witness. In a prosecution under this chapter, the attorney general may, with the consent of the department, compromise the case by accepting from the defendant a sum not less than the tax, interest on the tax, and all costs and expenses.

Sec. 43.70.110. *Definitions.*—In this chapter, unless the context otherwise requires, the following words have the meanings indicated.

(1) "Business" includes all activities or acts, personal, professional, or corporate, engaged in or caused to be engaged in, or following or engaging in a trade, profession, or business, including receipts from advertising services, rental of personal or real property, construction, processing, or manufacturing, but excluding fisheries businesses, fishermen, liquor licenses, insurance businesses, mining, and coin-operated amusement and gaming machines, calling or vocation, with the object of financial or pecuniary gain, profit or benefit, either direct or indirect, and not exempting subactivities producing marketable commodities or services used or consumed in the main business activity, each of which subactivities shall be considered business. The giving or supplying of services as an employee and the furnishing of property, services, substances, or things, by a person who does not hold himself out as regularly engaged in those transactions, does not constitute business under the meaning of this chapter. [Comp. ¶ 65-053.]

(2) "Gross receipts" means receipts from sources in the state, whether in the form of money, credit, or other valuable consideration received from engaging in or conducting a business without deducting the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense, except that "gross receipts" do not include cash discounts allowed and taken on sales, and sales refunds, either in cash or by credit, uncollectible accounts written off, and payments received in final liquidation of accounts included in the gross receipts of a previous return made by the person. Receipts from sales, wherever made, of goods, wares, and merchandise manufactured or processed or originating in the state are considered a part of gross receipts from sources in the state, and the holder of a state

license under this chapter doing business inside and outside the state is liable under this chapter as to that portion of his gross receipts attributable to his Alaska operation. "Gross receipts" also includes all amounts paid or assigned to subcontractors. Individuals representing firms taxed under this chapter on volume of business done, working as agents on commission instead of as employees, may compute their gross receipts as equal to their gross commissions. [Comp. ¶ 65-319, 65-350.]

(3) "Income year" means calendar year. If a person carries on business during a part only of the income year, "income year" means the period within the income year during which the person carries on business. [Comp ¶ 65-057.]

(4) "Person" includes an individual, firm, partnership, joint adventure, association, corporation, estate trust, business trust, receiver, or any group or combination acting as a unit. [Comp. ¶ 65-055.]

Sec. 43.70.120. *Short title.*—This chapter may be cited as the Alaska Business License Act.

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TERRITORY OF ALASKA

*Office of the Auditor*

JUNEAU, ALASKA

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## CHAPTER 71

### AN ACT

Establishing a procedure to insure the collection of all Territorial taxes and license fees from nonresident corporations, firms, partnerships, associations, joint ventures, persons and all other nonresident business entities who sever or take any resources or transact or do any

business in Alaska; requiring a statement to be filed with the Tax Commissioner; requiring posting of a tax bond under certain conditions; appointing the Auditor as agent for service of process; prescribing penalties; and declaring an emergency.

(S. B. 105)

Be it Enacted by the Legislature of the Territory of Alaska:

Section 1. *Intent.*

With respect to the collection of taxes from nonresident corporations, firms, partnerships, associations, joint ventures, persons and all other nonresident business entities who sever or take any resources from, or transact or do business in Alaska, the Legislature recognizes these facts:

(a) That the overwhelming majority of such nonresidents have no security or property physically located in Alaska against which the Territory can proceed to enforce the payment of Territorial taxes and license fees.

(b) that such nonresidents leave Alaska for varying periods, thereby making the recovery of Territorial taxes and license fees difficult, if not impossible.

(c) that by reason of such departures from Alaska it is impossible to obtain personal service upon such nonresidents in any proceeding instituted for the recovery of Territorial taxes and license fees.

Therefore, in order to establish a procedure to insure the collection of any and all Territorial taxes and license fees from such nonresidents who sever or take any resources from, or transact or do business in Alaska, the Legislature deems it necessary that all such nonresidents, as a condition precedent thereto, must:

(1) File a sworn statement with the Tax Commissioner as hereafter provided, and

(2) post a tax liability bond, if required, as hereafter provided. Provided further that the bond need not be posted if the estimated tax or taxes as set forth in the statement required in Section 2 hereof, are paid in advance, and

(3) appoint the Auditor as their statutory agent for the service of legal process.

Section 2. *Filing Statement and Tax Bond with Tax Commissioner.*

Every nonresident corporation, firm, partnership, association, joint venture, person and other business entity shall, as a condition precedent to the act of severing or taking any resources from, or transacting or ding business in Alaska, file, on or before June first of each year, commencing June 1, 1959, a sworn statement in affidavit form with the Tax Commissioner setting forth, among other things, the following information: name and address of the taxpayer and, in case of a corporation, the name and address of each officer, estimated gross business receipts for the current tax year or, in those instances where resources will be severed or taken from Alaska, the estimated fair market value thereof at the time of the severance or taking: total estimated payroll in Alaska for the current tax year: total estimated taxes and license fees of any and all kind that will be owing the Territory for the current tax year: whether the taxpayer owns any real property in Alaska on which such taxes may become a first lien, and if so, a description of said property and the fair market value of the taxpayer's interest therein. If the said value of the taxpayer's interest in such real estate is not equal to twice the amount of the estimated tax and license fees for which such taxpayer will be liable to the Territory, the taxpayer shall file with the Tax Commissioner a bond or other security approved by the Attorney General of Alaska in a sum equal to twice the estimated amount of such taxes and license fees, but in no event shall said bond be less than One Thousand ($1,000.00) Dollars.

Provided, however, that the bond requirement may be waived, in whole or in part, if the taxpayer shows in writing to the satisfaction of the Attorney General that the amount of the bond would be an undue hardship.

Section 3. *Auditor as Agent for Service of Process.*

Every nonresident corporation, firm, partnership, association, joint venture, person and other business entity, shall, as a condition precedent to severing or taking any resources or transacting or doing business in Alaska, file with the Auditor of Alaska a duly executed and notarized instrument, constituting the Auditor and his successors in office the true and lawful attorney, upon whom all original process may be served *in any action or legal proceeding resulting from the taxpayer's failure or neglect to pay any Territorial taxes or license fees,* and therein shall agree that any original process against such nonresident taxpayer shall be of the same force and effect as if personally served on such nonresident taxpayer within Alaska. The service of such process shall be made by leaving a copy with the Auditor. In the event legal action is instituted against such a nonresident taxpayer, the Auditor shall forthwith notify such nonresident by sending a copy of said process by registered letter to the post office address stated in the affidavit on file with the Tax Commissioner.

In case such a nonresident taxpayer *has engaged* in severing or taking any resources or transacting or doing business in Alaska, and shall have failed to comply with the above condition precedent of appointing the Auditor as agent for service of process, service may nevertheless be made upon the Auditor, who shall then transmit a copy of said process by registered mail to the last known address of the taxpayer, and such service shall be held in all courts within the Territory to be binding to the same force and effect as if personally served on such nonresident taxpayer within Alaska.

Section 4. *Proceedings Against Bond.*

In the event a bond or other security is filed, any judgment recovered by the Territory against a nonresident taxpayer for delinquent taxes, license fees, penalties or interest may be satisfied in whole or in part by appropriate action against the bond or other security. Provided, however, that nothing herein shall prevent the Territory from pursuing any other remedy for the collection of delinquent taxes or license fees.

Section 5. *Penalties.*

Any person, or officer of any nonresident corporation, firm, partnership, association, joint venture, or other business entity who shall fail or neglect to comply with any of the provisions of this act shall be punished by a fine not to exceed $1,000.00 or imprisonment not to exceed one year, or both such fine and imprisonment. Any fines or penalties imposed hereunder resulting from prosecution by the Attorney General of Alaska shall be covered into the General Fund.

Section 6. *Emergency.*

An emergency is hereby declared to exist and this act shall take effect immediately upon its passage and approval.

Approved March 23, 1955